IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 590 OF 2002

Rohidas Narayan Dhotre ....Appellant.
V/s (Orig.Accd.)
The State of Maharashtra ....
Respondents.

Mr.S.A.Ingawale, Adv. for the appellant.

Mr.V.B.Konde Deshmukh, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

9th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Pandharpur in Sessions Case No.12 of 1997 on 9.4.2002 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story is that the accused and the victim Kashibai were married to each other for several years and used to quarrel with

each other. On 4.8.1996 it is alleged that the accused poured kerosene on the body of his wife Kashibai and put her on fire as a result of which she died. Before she died she had made two dying declarations. The accused was arrested and prosecuted. The prosecution examined eight witnesses to prove its case and the learned trial Judge on appreciation of this evidence convicted the accused a aforesaid. This order of conviction is question in this appeal. The learned counsel appearing on behalf of the appellant-accused pointed out to us the glaring contradictions, improvements in the dying declarations recorded by the victim. According to him, in the face of such contradictory statement in dying declarations same are required to be rejected in law and if so rejected, there is no other evidence on the basis of which the accused can be convicted. According to the additional public prosecutor the contradictions, omissions or improvements are not so staggering as to require rejection of the entire dying declaration. We have to examine these rival contentions in the light of evidence as reappreciated by us.

4. P.W.1-Shankar Mali is the Assistant Sub Inspector who recorded the statement about the fact of the victim being admitted in the hospital in burnt condition. P.W.2 is Dr.Anil Joshi who was on duty at the municipal hospital when in the morning Kashibai was admitted to the hospital where she complained of burns due to her husband

pouring kerosene on her body and putting her on fire. This witness has deposed that at 7.30 a.m. Kashibai was taken away by her relatives from the hospital and she was readmitted at 11.15. 1.m. He certified the dying declaration recorded by Head Constable at 1.30 p.m. and endorsed by Executive Magistrate at Solapur. Both endorsements declare that the patient was in a condition to talk, was conscious and able to give statement.

5. P.W.3-Ramchandra Shirke is the Special Executive Magistrate who recorded the second dying declaration at 8.00 p.m. He has proved the said dying declaration. P.W.4-Shivaji Bandpatte is brother of the victim who is declared hostile. P.W.5-Anil Katke panch witness for the spot panchnama. He is also declared hostile. P.W.6-Nagnath Pandhare is another Assistant Sub Inspector who recorded the dying declaration of the victim. P.W.7-Dattatraya Rajbhoj is the police reader and P.W.8-Subhash Patil is the investigating officer. From the above evidence it will be seen that except for dying declarations there is no other evidence which can be said to be corroborative in nature and which can substantiate the dying declarations.

6. The first dying declaration was recorded by the police head constable in which Kashibai the victim has stated that the accused came to her and quarreled with her throughout the night and at 6.00 a.m. He poured kerosene on her body and put her on fire. She then

states that the accused took her in rickshaw to his second wife and from there she was admitted to the hospital. She has stated in this statement that the incident was seen by one Datta Gosavi and other all members. According to the statement therefore the quarrel was throughout the night and the cause is not stated. It claims that there were other witnesses also present. These witnesses are not examined by the prosecution.

7. The second dying declaration recorded at 8.00 p.m. in the evening by the

Special Executive Magistrate in which she had said that the accused quarreled with her in the night. He charged her of having stolen Rs.1000/- and when she denied he poured kerosene on her and put her on fire. She states that she was admitted to the municipal hospital at 8.00 in the morning. The statement of the doctor shows that she was admitted in the hospital first around 6.30 p.m. in the morning, she was taken away from hospital and was readmitted in the hospital at 11.30 a.m. The statement in both the dying declarations regarding her admission to the hospital are therefore drawn atleast uncorroborative.

8. In one dying declaration the victim claims that there was quarrel. It does not say what was the quarrel for. In the second dying declaration cause of quarrel is given that the accused charged her of the theft and then poured kerosene on her and set her on fire. In the

first dying declaration there is no mention of the husband pouring water on her, in the second dying declaration it is there. In the first dying declaration how the fire caused injuries to her body is stated, in the second dying declaration nothing of the kind is stated. These therefore are obvious improvements made in the case. The first dying declaration does not give any reason for quarrel therefore that reason is supplied in the second dying declaration. The statement in second dying declaration that the husband caused her skull injury is not to be found in the first dying declaration. We will have to bear in mind the fact that the accused was not staying with the victim. He had married another woman and was staying with her. There is therefore no cause apparently why he would come to the first wife to put her on fire. Apart from that the contradictions between the two dying declarations are so grave and the infirmities shown obviously that it is absolutely unsafe to rely on these dying declarations.

9. If the dying declarations are excluded from consideration it is obvious that there is no other evidence to warrant conviction of the accused as done by the learned trial Judge. In the result, therefore appeal succeeds and is allowed. The order of conviction and sentence by the learned trial Judge is set aside. The appellant-accused Rohidas Narayan Dhotre is acquitted of all the charges leveled against him. He is in jail. He be released forthwith if not required otherwise.